Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1978

No. ___ 78-522

CHARLES WENTZ and V.I.P. ELECTRIC, Inc.,
PETITIONERS,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL NO. 1525,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

LAW OFFICES OF KENNETH COBB, P.C.
AND KENNETH COBB
1701 SOUTH 17TH STREET
P.O. BOX 2309
LINCOLN, NE 68502
Counsel for Petitioners

JOE CHRISTENSEN, INC., 1540 Adams Street, Lincoln, Nebraska 68521

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CITATIONS

Cases:

Accord Local P575 Amalgamated Meat Cutters (Iowa Beef Packers, Inc.) 188 NLRB 5 (1971) 7

International Bhd. of Electrical Workers, et al., and Franklin Electric Construction and Utilities 121 NLRB 143 (1958) 7

United Mine Workers v. Coronado Coal Co. 259 U.S. 344 (1922) 6, 7, 8, 9

Miscellaneous:

U.S. Department of Labor-Bureau of Labor Statistics (1977), Directory of National Unions and Employee Associations, 1975, Bulletin 1937 7

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The petitioners, Charles.Wentz and V.I.P. Electric, Inc., (Party-Plaintiff by reason of subrogation pursuant to Nebraska Workmen's Compensation), respectfully pray that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on June 29, 1978.

OPINION BELOW

The opinion of the District Court for the District of Nebraska was never rendered in published form. The District Court overruled respondents' motion to dismiss but sustained respondents' motion for summary judgment and to dismiss petitioners' amended complaint as to the International Brotherhood of Electrical Workers. The Eighth Circuit affirmed the District Court's opinion. The opinion of the Eighth Circuit appears in the appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was filed on June 29, 1978. This petition for certiorari was filed within 90 days of that date which would be September 27, 1978. This Court's jurisdiction is invoked under 28 U.S.C., Section 1254(1).

QUESTIONS PRESENTED

1. Can the International Brotherhood of Electrical Workers delegate to another its jurisdiction over all electrical workers, and escape liability when the designee acts arbitrarily, discriminatorily or in bad faith?

2. Is the local union, to-wit, Local 1525 IBEW, an agent of the International/Parent union?

3. Are arbitrary, discriminatory, or bad faith actions on the part of a labor union a basis for liability when the result of such conduct is to fail to enforce certain provisions of the collective bargaining agreement?

4. Must the International affirm conduct of the local union to be liable for the local's activities or are they liable for misfeasance and nonfeasance of the agent?

STATUTORY PROVISIONS INVOLVED

UNITED STATES CODE, TITLE 29

Section 159(a) Exclusive representatives—Employee's Adjustment of Grievances Directly with Employer.

> Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such a unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, that any individual employee or a group of employees shall have the right at any time to present grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, that the bargaining representative has been given opportunity to be present at such adjustment.

HOW FEDERAL QUESTION IS PRESENTED

The jurisdiction of the District Court was invoked because a federal question arises under 29 U.S.C. Sec. 159(a), the National Labor Relations Act.

STATEMENT OF THE CASE

Charles Wentz has been a journeyman-lineman and member of Local Union 1525 IBEW since August, 1969. (R.38) Wentz had been sent from the hall by the steward to work on the City of Lincoln transmission lines for V.I.P. Electric, Inc., about three weeks before the day of the accident, February 28, 1972. Wentz was then 29 years old and working as a foreman. (R.41) Lynn Landholm and Dennis Clark worked with him and were present when the accident occurred. (R.42)

The 13,000 volt electric transmission lines were reached by utilizing an Elliott High Rise, which is a bucket on the end of a hydraulic crane. A defective hydraulic system caused the bucket to drop or shift position, which, in turn, caused Charles Wentz to lose his balance and threw him into the transmission lines (R.43) resulting in horrendous injuries. (R.87,88)

About ten minutes before the accident, Callahan, the business agent for Local 1525, was at the job site. (R.50) Wentz complained then as he had on other occasions about the unsafe working conditions surrounding use of the hydraulic system and the truck. (R.58) Besides the hydraulic leak, the levelers on the truck did not work, the outriggers continually allowed the boom to sway from side to side, and twice Wentz had to run the truck without brakes. (R.59)

Callahan, the business agent, told Wentz to do things the way V.I.P. wanted them done—not the way the contract required. Callahan said V.I.P. was a "new contractor" and the union should "give him every break it could." (R.66) The union needed all the new contractors it could get and it should bend over backwards to care for and accommodate the contractor. (R.88) This meant that Wentz must work under these conditions or there would be no job. (R.89)

Clark, another union member, testified that the standard rumor at the job was that unsafe equipment continued to be used because Sanks and V.I.P. was a new contractor, that V.I.P. was union and Local 1525 wanted to keep him union. (R.141)

Landholm, another union employee, was also aware that complaints had been made to V.I.P. about the hydraulic system and saw Callahan on the job site that day. (R.151)

Henry M. Conover, 1221 Massachusetts Avenue, N.W., Washington, DC, was employed by the International Brotherhood of Electrical Workers as Assistant to the President, having held that position for six years immediately preceding the time of deposition. (R.93) He related Congress delegated to the International the power to represent the laboring man. The International is the parent body which charters the local union

and gives it autonomy to act within a certain area. (R.102) One of the International's functions is to see that the local operates within the authority granted by the International. (R.103) All authority of the local union originates from the International Constitution. (R.106)

Of the exhibits which apply to safety considerations, none is so direct as the Constitution of the International Brotherhood of Electrical Workers as amended at the 29th Convention, Seattle, Washington, September, 1970. (Pl. Ex. 3; R.27,101)

Special attention should be given to Article I, Section I, wherein it states that the IBEW exercises "jurisdiction over all electrical workers." The Constitution specifically delineates the extensive authority of the International over the local unions, for example:

A. To set up territorial limits of local unions.

B. To designate minimum and maximum numbers of local unions.

C. The International is to approve all officers, by-laws, and amendments thereto before they become effective as to the local union.

D. No contract is of any force and effect until approved by the International President.

E. To suspend any officer or any local union which in the opinion of the International is not doing its job.

F. To take charge of the affairs of any local union.

G. To receive monies and *to designate the amount of money to be received from each local union*.

H. To specify even the hours that a local union may hold meetings.

I. To set up the standards of safety which the local union shall follow.

J. To make investigations of accidents.

K. In the event a local union is sued, to provide legal assistance at the expense of the international Brotherhood of Electrical Workers.

According to Conover, it is the responsibility (duty) of the union's business agent to see that the safety provisions of the contract are enforced. (R.120) An International representative would deal in negotiations with local contractors as to safety rules and regulations in a contract when requested to do so by the local union. (R.144) A guide to safety was written by the Safety Department of the International, of which Conover was in charge, and given to all local unions. (R.94) I.B.E.W., Safety Guide for Local Unions, issued by International Brotherhood of Electrical Workers Safety Department. (Pl. Ex. 1; R.27,101) Safety is part of the working conditions which are subject to negotiation. Refusal to negotiate working conditions is a violation of law. (R.98)

REASONS FOR GRANTING THE WRIT

1. Special and important fact and policy considerations concerning worker compensation for injury necessitates the Court's review of agency principles relating to the International.

The significance of this case goes far beyond the merits of the issues; specifically, can the powerful I.B.E.W. escape liability for arbitrary and discriminatory conduct to its members by passing the buck to an insolvent local union? Does the 1922 case of *United Mine Workers v. Coronodo Coal Co.*, 259 U.S. 344 (1922) still apply, that before a parent union can be found liable for the local's action it must affirm that action, or do the ordinary rules of principal servant-agency apply? Counsel acknowledges circuit court authority originating from this Court's holding in *United Mine Workers v. Coronodo Coal Co.*, *supra*, that without affirmance by the international unions, they are not liable for actions of individual members. We strongly assert that the time has come to review this doctrine, announced 55 years ago, when unions were in their infancy and their survival strength was tentative.

Today, unions have matured to a position of unparalleled power which they do not hesitate to exercise. If the Eighth Circuit opinion stands, the worker who is victim of arbitrary and discriminatory union conduct is denied his rightful opportunity to recover compensation. We speak of social responsibility. We stress to the Court that such a decision directly and immediately affects 20 million union members, 22% of the total U.S. labor force,[1] and establishes that unions no longer need be responsive and viable to the ideals and people they were created to protect. To reaffirm the *United Mine Workers*, *supra*, serves not only to reward unions financially for irresponsible conduct, but more particularly to destroy the future lives of many.

This case *sub judice* is not one in which a plaintiff seeks to impose liability on a union which merely included a general safety provision in a collective bargaining agreement. Rather, the defendant International unilaterally instituted, under its own constitution, a highly comprehensive safety provision review and enforcement procedure and maintained close control over the local.

There has been inconsistent and confusing reasoning used to reach decisions in cases involving internationals. That the courts no longer appear so certain that agency is not present indicates they are looking to the big picture rather than strictly to precedent. While the International was not held liable, there is appropriate language in *International Bhd. of Electrical Workers et al., and Franklin Electric Construction and Utilities*, 121 NLRB 143 (1958):

> "If the respondent local is not merely an administrative arm of its international, the latter's responsibility for any specific conduct to the former must be determined by the ordinary rules of agency." (*Id.* at 148)

This principle was also recognized in *Accord Local P575 Amalgamated Meat Cutters (Iowa Beef Packers, Inc.)*, 188 NLRB 5 (1971). While the facts do differ, this Court even stated in *United Mine Workers v. Coronado Coal Co.*, *supra*, that agency

1. From U.S. Department of Labor-Bureau of Labor Statistics (1977), Directory of National Unions and Employee Associations, 1975, Bulletin 1937.

law does apply: "It is a mere question of actual agency . . ." *Id.* at 395.

Coronado Coal, *supra*, must be distinguished from the instant case. In *Coronado*, the locals were authorized to conduct local strikes completely independent from the International. An act of ratification was necessary to involve the International but none was found. Here, however, by Article I, Section 1, of the IBEW Constitution, (Pl. Ex. 3; R.27,101), it is seen the International exercises "jurisdiction over all electrical workers." Article XVII, Section 7, goes further:

> "All bylaws, amendments and rules, all *agreements*, jurisdiction, etc., *of any kind or nature shall be submitted . . . to the I.P.* (International President) *for approval. . . .* No L.U. (Local Union) shall put into effect *any* bylaw, amendment, rule, or *agreement* of any kind without first securing such approval. *All these shall be null and void without I.P. approval.*" (Emphasis added.)

The contract (Pl. Ex. 4; R.33,101) "Agreement Effective on all Outside Electrical Work Within the Jurisdiction of the Local Union #1525", executed by defendant, Local 1525, shows approval by the International office on November 19, 1973. Clearly exhibited in these documents is a downward flow of authorization from the International to the Local.

Any collective bargaining agreement or contract between V.I.P. and Local 1525 must have been approved by the International President or be declared null and void according to the International Constitution. Claiming the local is the exclusive bargaining agent for the workers is legal fiction because the International must approve everything the local does. Then isn't arbitrary enforcement, i.e. rich contractor, safe equipment; new or poor contractor, unsafe equipment, discrimination by the International? Why then is the International given the special privilege that it is liable only if it takes affirmative action as to the local's conduct?

International President Charles H. Pillard, in a letter to all construction locals on September 25, 1973, (Pl. Ex. 6; R.36)

pointed out that the policy of the U.S. Government, through the U.S. Department of Labor, has been to pursue actively a course of conduct to reverse an industry trend in which 23% of the construction workers suffer job-related injuries or illnesses, the "highest of all industries." He went on to state:

> "This shameful condition must be eliminated and we must share in the responsibilities of reversing this trend by doing our part in negotiating adequate protection for IBEW members."

He then mandated that in future agreements, all locals include provisions for more stringent safe working practices.

How can the International now deny direct involvement when it is required by its constitution and it has actively sought involvement? What body other than the International is in a better position to make local agents, such as Callahan, accept their responsibility? More important, who will ever be responsible for safety in this dangerous industry if the "Callahans" in other locals refuse to act? If the International is liable only by affirming the conduct of the Local then it will never be responsible. Who is ultimately to bear the responsibility to the worker? When the local business agent fails and the International denies any responsibility, the helpless, injured worker has no redress. His plight is even more onerous if the courts also refuse to uphold the federal policy of protection for the worker which is the very foundation of the National Labor Relations Act.

The Eighth Circuit is too conclusionary in its opinion. Certainly Wentz did not complain to the International officials. It would be unreasonable to require this considering the short time he was on the job. Nonetheless, notice to an agent (Callahan) may be imputed to the principal (International), absent adverse conduct. (We recognize that the Court is familiar with the basic law of agency.) It was the arbitrary and discriminatory conduct of Local 1525 that allowed V.I.P. to breach its contract.

The Eighth Circuit cannot rely on *Coronado*, *supra*, when the fact of autonomous local control therein clearly distinguishes it from the IBEW in the instant case. Neither can it say the International is not a party to the collective bargaining contract when International approval is required. The Court should not allow *stare decisis* to strangle, ultimately destroying important individual rights where the rationale behind the rule of law has disappeared.

CONCLUSION

For these reasons, Petitioner prays the Court issue a writ of certiorari to review the judgment and opinion of the Eighth Circuit.

Respectfully submitted,

LAW OFFICES OF KENNETH COBB, P.C.
KENNETH COBB
1701 South 17th Street
P.O. Box 2309
Lincoln, NE 68502
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of September, 1978, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to David D. Weinberg, Weinberg & Weinberg, P.C., 300 Keeline Building, Omaha, Nebraska, 68102, Counsel for the Respondent. I further certify that all parties required to be served have been served.

KENNETH COBB
1701 South 17th Street
P.O. Box 2309
Lincoln, NE 63501
Counsel for Petitioner

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 78-1029

CHARLES WENTZ AND V.I.P. ELECTRIC, INC.,
APPELLANTS,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL NO. 1525,
APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA.

Submitted: May 19, 1978

Filed: June 29, 1978

Before VAN OOSTERHOUT, Senior Circuit Judge, LAY and HENLEY, Circuit Judges.

VAN OOSTERHOUT, Senior Circuit Judge.

Charles Wentz and V.I.P. Electric, Inc.,[1] seek to recover

1. V.I.P. Electric, Inc., Wentz's employer, is made a party plaintiff because it seeks by subrogation to recover payments made to Wentz under the Nebraska workmen's compensation law. Since we find summary judgment was properly granted dismissing

damages against International Brotherhood of Electrical Workers, hereinafter called International, and International Brotherhood of Electrical Workers Local No. 1525, hereinafter called Local 1525, for serious injuries allegedly caused union member Wentz by the union's failure to enforce reasonably safe working conditions. It is alleged that defendants, over plaintiff's protest, permitted V.I.P. Electric to use defective equipment which caused plaintiff to fall against a live wire.

International filed a motion to dismiss plaintiffs' amended complaint on the ground that it did not state a cause of action against it, or alternatively for summary judgment upon the basis that there was no genuine issue of material fact to support plaintiffs' claim against International. International's basic claim is that it cannot be held liable for acts of Local 1525 which it has not authorized or ratified.

On October 19, 1976, the trial court (Judge Urbom) entered an order to the effect that the motion would be treated as one for summary judgment. The parties were given twelve days to present affidavits, documents and requests for oral testimony.

International's motion was submitted on depositions, affidavits and briefs. The court granted International's motion for summary judgment and dismissed the complaint against International. Pursuant to Rule 54(b), Fed. R. Civ. P., the court found that there was no just reason for delay and directed entry of final judgment in favor of International.[2]

Wentz has taken a timely appeal from the final judgment entered against him in favor of International. This court has jurisdiction under 28 U.S.C. § 1291. V.I.P. Electric has not appealed.

The basic issue presented by this appeal is whether the record conclusively establishes as a matter of law that plaintiffs have no cause of action against International.

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the claim against International, V.I.P. Electric, Inc., has acquired no rights against the International and its claim will not be further discussed in this opinion.

2. Local 1525 also moved to dismiss the complaint. Such motion was denied. The validity of such ruling is not before us on appeal.

Judge Urbom in an unreported memorandum opinion states:

> It is clear that the plaintiffs do not claim that any representative of the International actually did anything or was required to do anything with respect to the conditions under which the plaintiff Wentz worked. The International apparently did play some role in determining certain safety provisions of the collective bargaining agreement, but this has no connection with the discriminatory or bad faith conduct which allegedly caused the plaintiff Wentz' injuries. The plaintiffs' theory is that the International exercises such control over the Local that the acts of the Local are attributable to the International. While the power of the International over the affairs of the Local is considerable, it is no more pervasive than typically has been involved in cases in which it has been held that locals and national or international unions are separate entities. See *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344 (1922), *Gray v. International Assoc. of Heat Insulators, Local 51*, 416 F.2d 313 (C.A. 6th Cir. 1969); *DiGiorgio Fruit Corp. v. NLRB*, 191 F.2d 642 (C.A.D.C. Cir. 1951).

In our recent case of *Highway & City Freight Drivers, Dockmen and Helpers, Local Union No. 600, v. Gordon Transports, Inc.*, — F.2d — (8th Cir. May 19, 1978) (No. 77-1542), we held that a local union has adequately autonomous existence to allow it to file a voluntary petition in bankruptcy. In support thereof we noted that *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 392 (1922), recognized that unions "are, as has been abundantly shown, associations existing under the laws of the United States, of the Territories thereof, and of the States of the Union." Slip op. at 4. This court further held: "In *Coronado Coal* the Supreme Court held that unincorporated labor unions such as the United Mine Workers were distinct entities suable in federal court." Slip op. at 5. Support for such position is also pointed out in *United States v. White*, 322 U.S. 694 (1944). Local 1525 and International are separate and distinct entities.

The collective bargaining contract which contains the union's obligation to protect the safety of its employees was entered into by Local 1525 and V.I.P. Electric. The International is not a party to such contract.

Complaints raising the lack of safety features of V.I.P. Electric's equipment were made to local officials only. As found by the trial court, there is no support for any claim that safety complaints were made to the International. No International representative participated in the incident leading to the unfortunate accident.

Under the undisputed facts shown by the record, Local 1525 as the exclusive bargaining agent for its employees is the party responsible for enforcing the safety provisions of its contract with the employer.

In *Kuhn v. National Association of Letter Carriers*, 528 F.2d 767, 770 (8th Cir. 1976), this court held:

> [T]he record shows conclusively that the National Association was under no duty, either statutory or contractual, to Kuhn. It played no part whatsoever in advising or consulting with Kuhn with respect to the grievance and was in no way responsible for the failure, if any, of Branch 5 to properly present Kuhn's case at the informal appearance before the postal authorities or in failing to file a notice of appeal within the appropriate time limits.

Under ordinary rules of agency, International is not liable for acts of Local 1525 which it has not authorized or ratified. In our present case the record establishes without dispute that Wentz never made safety complaints to any International official or representative, nor did any International official or agent participate in the negotiations or enforcement of the collective bargaining agreement.

The judgment dismissing the complaint against International is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.